

BEFORE THE FAIR POLITICAL PRACTICES COMMISSION

In the Matter of)	
)	
Opinion requested by)	No. 76-005
William L. Owen, City)	June 2, 1976
Attorney, City of Davis)	
)	

BY THE COMMISSION: We have been asked the following questions by William L. Owen, City Attorney, City of Davis:

Are planning commissioners or city council members prohibited from making, participating in the making, or in any way using their official position to influence the adoption of a specific land use plan for the future of the City of Davis "core area" when:

(a) A planning commissioner owns a home across the street from one boundary of the "core area," in a neighborhood which is viewed as inextricably tied to the "core area" in terms of planning considerations. This question relates to City of Davis Planning Commissioner Marshall Hunt.

(b) A planning commissioner is a limited partner in a partnership which owns a vacant lot within the existing commercial zone of the "core area" and is in the process of constructing a commercial building thereon. This question relates to City of Davis Planning Commissioner James A. Willett.^{1/}

^{1/}Mr. Owen's original inquiry stated:

A planning commissioner is a limited partner in a venture which plans to acquire a vacant lot within the existing commercial area of the "core area" for the purpose of constructing a building thereon.

In a letter to the Chairman of the Commission dated May 5, 1976, Mr. Owen explained that the following subsequent events had occurred:

(a) The limited partnership has acquired ownership of the then vacant lot.

(b) Architectural plans for a commercial structure were approved by the City and a building permit has been issued.

(c) Construction of the structure is now approximately 50 percent complete.

(d) The limited partnership has entered into leases with commercial tenants who will take occupancy upon completion of the structure.

(c) A Council member is a limited partner in a retail business (natural foods store) which leases space within an existing commercial building in the "core area." This question relates to Davis City Councilman Robert N. Black.

The relevant facts set forth in the opinion request are as follows:

The City of Davis has designated a 23 square block area as its "core area." This area includes the traditional "downtown" shopping area as well as a number of older residential dwellings. Many of the residential dwellings are rented to students or senior citizens and are generally among the lowest cost housing available in the city. The city is currently in the process of reviewing its land use plans for the "core area." The Planning Commission and the City Council will be required to make the significant policy decisions regarding any "core plan." Among the possible recommendations to be included in such a plan are: expansion of commercial facilities at the expense of removal of existing low cost rental units; changes in traffic patterns by designation of one-way streets; and an increase in parking areas. Decisions on these and other possible alternatives will likely have the effect of either preserving the "status quo" in terms of the number and variety of commercial enterprises within the area or allowing for significant expansion of such development. In sum, the adoption of the "core area" plan in its final form may have significant financial effects on the value of holdings in real property and commercial business establishments within and near the "core area."

CONCLUSION

Based on the facts we have been provided, we conclude that Planning Commissioner Willett should disqualify himself from participating in the decision to adopt the "core area" plan. Commissioner Hunt's and Councilman Black's participation is not barred.

ANALYSIS

We now consider individually the three questions presented. The pertinent sections of the Political Reform Act provide:^{2/}

87100. No public official at any level of state or local government shall make, participate in the

^{2/}All statutory references are to the Government Code unless otherwise noted.

making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest.

87103. An official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on:

(a) Any business entity in which the public official has a direct or indirect investment worth more than one thousand dollars (\$1,000);

(b) Any real property in which the public official has a direct or indirect interest worth more than one thousand dollars (\$1,000);

(c) Any source of income, other than loans by a commercial lending institution in the regular course of business, aggregating two hundred fifty dollars (\$250) or more in value received by or promised to the public official within twelve months prior to the time when the decision is made; or

(d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management. For purposes of this section, indirect investment or interest means any investment or interest owned by the spouse or dependent child of a public official, by an agent on behalf of a public official, by any business entity controlled by the public official or by a trust in which he has a substantial interest. A business entity is controlled by a public official if the public official, his agents, spouse and dependent children hold more than fifty percent of the ownership interest in the entity. A public official has a substantial interest in a trust when the official, his spouse and dependent children have a present or future interest worth more than one thousand dollars (\$1,000).

As we have previously stated in the opinion requested by Tom Thorner, 1 FPFC Opinions 198, 202 (No. 75-089, Dec. 4, 1975):

Under the foregoing sections, several elements must be present before a public official is required to disqualify himself from participation in a governmental decision. First, it must be reasonably

foreseeable that the governmental decision will have a financial effect. Second, the anticipated financial effect must be on a financial interest of the official, as defined in Sections 87103(a) through (d). Third, the anticipated financial effect must be material. And fourth, the governmental decision's anticipated financial effect on the official's financial interest must be distinguishable from its effect on the public generally.

With respect to these elements, Mr. Owen states in his opinion request that:

The ultimate resolution of the "core area" plan may have substantial impact upon future commercial competition and upon property values of both residential and commercial properties.

Since the interests held by the persons concerned in the instant matter all exceed in value the threshold amounts specified in Government Code Section 87103(a) through (d), supra, we interpret this statement as a stipulation that with respect to Commissioners Hunt and Willett and Councilman Black, each will be making decisions on the core area plan which will foreseeably have a material financial effect upon their financial interests.^{3/}

- We accordingly turn to an analysis of whether the effects of the decisions on the officials' financial interests are distinguishable from an effect on the public generally.

The Commission has recently adopted regulations concerning the meaning of the phrase "effect on the public generally." These regulations state:

A material financial effect of a governmental decision on an official's interests, as described in Government Code Section 87103(a) through (d), is distinguishable from its effect on the public generally unless the decision will affect the official's interest in substantially the same manner as it will affect all members of the public or a significant segment of the public....

2 Cal. Adm. Code § 18703.

^{3/} This is not to say that all decisions concerning the core area and the plan will have a material effect on these interests. Some or most may very likely have de minimis impact on the public officials' various interests. For further definition of what constitutes a "material financial effect," see the Commission's regulations defining that phrase at 2 Cal. Adm. Code § 18702.

In the instant case, we interpret the phrase "public generally" as comprising those persons within the jurisdiction of the respective officials, i.e., the residents and persons doing business in the City of Davis. While the adoption of the "core area" plan may have some financial impact on the economic interests of all residents of Davis, it can hardly be contended that an effort to either revitalize, commercialize or otherwise seriously alter the area bounded by the "core area" plan will affect all residents "in substantially the same manner." Some persons or groups of persons will be economically affected more directly than others.^{4/} The question, therefore, becomes what constitutes a "significant segment" of the public.^{5/}

(a) With respect to inquiry "(a)," we conclude that residential home owners within and in the immediate vicinity of the "core area" constitute a "significant segment" of the public and that Planning Commissioner Hunt accordingly need not disqualify himself from participation merely because he owns a home as described. While certain aspects of the plan may operate to increase the value of this home, either as residential or commercial property, it is apparent that the plan will have a "substantially similar" effect on numerous other residential properties, perhaps throughout the entire city as well as those near the "core area." The effect of the plan on residential property values is speculative at this point. More importantly, there is no indication that the plan or any portion thereof will have a peculiar impact on the value of Commissioner Hunt's property. If further evidence emerges in the development of the plan which would distinguish the effect of the plan or a portion of it upon Commissioner Hunt's interest in comparison to other residential property owners, he may be required to disqualify himself with respect to the matter before him for decision.

(b) We reach a contrary conclusion with respect to inquiry "(b)." The "segment" of the "public" owning buildings leased for commercial purposes is much smaller than that of residential property owners. In terms of the regulation, 2 Cal. Adm. Code § 18703, supra, this segment of the general

^{4/}For instance, persons who do not hold property in the city may "benefit" from increased shopping convenience, or even lower retail prices occasioned by increased competition. They will not, however, stand to profit to the same degree as those having direct or indirect financial interests in the "core area."

^{5/}The regulations do not articulate precise circumstances defining what is a significant segment, but rather establish certain categories of entities which may not be defined as "significant segments" of the public.

public could hardly be called significant. Furthermore, the effect of the plan will be much more direct and particular in benefitting such persons and their interests. The benefit to be realized by persons with interests such as those of Mr. Willett appears to be immediate; and the decisions to be made in adopting the "core area" plan appear crucial to the success of the investment. For example, it seems likely that adoption of certain proposals for the "core area" would serve to increase the value of Commissioner Willett's property, but could, on the other hand, serve to increase the number of competing leased property owners and hence, the profit to be realized by the building itself. We cannot conclude that an effect of a decision on Commissioner Willett's investment qualifies as an effect on any significant segment of the public generally. Rather, aspects of the plan are likely to have particular and identifiable effects on Commissioner Willett's investment. Accordingly, we conclude that he is barred from participating in decisions on those aspects of the plan which will materially affect his investment.

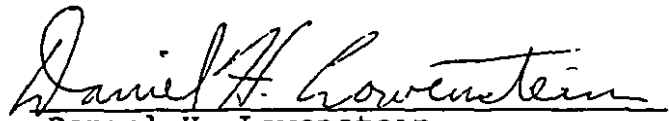
The situation posed by inquiry "(c)" lies somewhere between situations (a) and (b), above, in terms of the existence of any peculiar effect of the plan on the financial interest of the public official. There is no doubt that the adoption of the plan may have some economic repercussions on the retail merchants of the city. As indicated on page 2, supra, there is a possibility of increased competition, but there is also the possibility of increasing numbers of potential customers shopping in the "core area" commercial establishments. There are a substantial number and variety of retail establishments in the "core area." Approximately 250 such enterprises currently exist, and the goods and services offered encompass a wide range, including restaurants, grocery stores, specialty shops and other commercial establishments. The provisions of the plan are likely to affect all these establishments in substantially the same way.

It is true that under our regulations a single industry, trade or profession does not constitute the "public generally." We do not believe retail merchants constitute a single industry, however. Rather, such merchants constitute a major part of what is generally regarded as the business community and taken as a whole, may reasonably be regarded as "the public generally" within the meaning of Section 87103 and our regulations.

There is no reason to believe that the value of Councilman Black's interest will be affected differently from other retail merchants. For example, there is no indication that the plan will have a particularly beneficial (or harmful) effect on food stores. Nor need we be concerned with any possible

effects of the plan on the value of the land on which Councilman Black's store is located. Unlike Commissioner Willett, Councilman Black merely leases space on a rather short-term basis, and thus the proposed changes in the character of the area will affect only the amount of income to be derived from the store, not the intrinsic value of the property itself. Furthermore, there is no evidence that the adoption of the plan, or any of its provisions, will serve to create any adverse effect on retail businesses outside the "core area." Accordingly, the provisions of the Political Reform Act do not appear to bar Councilman Black's participation. Again, however, where Councilman Black's interests may be affected in a singular fashion by an aspect of a "core area" plan decision, his participation on this aspect may be barred.

Approved by the Commission on June 2, 1976.
Concurring: Carpenter, Lapan, Quinn and Lowenstein.
Commissioner Brosnahan abstained.


Daniel H. Lowenstein
Chairman